

# First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

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**Consideration of the status and operation of the Treaty and other matters important for achieving the objectives and purpose of the Treaty: other matters important for achieving the objectives and purpose of the Treaty, such as: complementarity of the Treaty with the existing nuclear disarmament and non-proliferation regime**

## **Complementarity with the existing disarmament and non-proliferation regime**

**Working paper submitted by the co-facilitators, Ireland and Thailand**

### **I. Introduction**

1. The Treaty on the Prohibition of Nuclear Weapons is a stand-alone legally binding instrument that includes a comprehensive set of prohibitions on nuclear weapons-related activities. It was negotiated following the adoption of General Assembly resolution [71/258](#), in which the Assembly decided to convene a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination. The General Assembly encouraged all Member States to participate in the conference, with the active participation and contribution of international organizations and civil society representatives.

2. Following the negotiations at the conference, the Prohibition Treaty was adopted by 122 States on 7 July 2017 and opened for signature by the Secretary-General of the United Nations on 20 September 2017. The Treaty entered into force on 22 January 2021, following the deposit of the fiftieth instrument of ratification of the Treaty with the Secretary-General of the United Nations on 24 October 2020, in accordance with article 15 (1) of the Treaty.

3. While it is a stand-alone legally binding instrument, the Prohibition Treaty builds upon, contributes and complements a rich and diverse disarmament and non-proliferation architecture. This consultation paper highlights those complementarities with specific disarmament instruments, in particular the Treaty on the Non-Proliferation of Nuclear Weapons.

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\* [TPNW/MSP/2022/1](#).



## II. Treaty on the Non-Proliferation of Nuclear Weapons

4. The Treaty on the Non-Proliferation of Nuclear Weapons is and remains the cornerstone of the international disarmament and non-proliferation architecture. The Non-Proliferation Treaty is composed of a preamble and 11 articles that serve to establish general legally binding rules to prevent the further spread of nuclear weapons; promote cooperation in the peaceful uses of nuclear energy; and further the goal of nuclear disarmament.

5. Since its entry into force in 1970, States parties to the Non-Proliferation Treaty have built a variety of supporting politically and legally binding frameworks around the Treaty to bolster and help implement its provisions. Under the Non-Proliferation Treaty, a safeguards system was established under the responsibility of the International Atomic Energy Agency (IAEA), which has elaborated an impressive structure of expertise and an enabling legal framework to facilitate the peaceful uses of nuclear technology, while implementing strict safeguards to prevent the diversion of fissile material. A legally binding voluntary additional protocol was also created, in order to grant IAEA full access to information concerning all parts of a State's nuclear fuel cycle. An additional protocol is currently in force in 137 States.

6. Similarly, under the Comprehensive Nuclear-Test-Ban Treaty (discussed further below), a global norm against nuclear testing was established, further strengthening the provisions of the Non-Proliferation Treaty, and the disarmament and non-proliferation regime more broadly. Support for the Test-Ban Treaty is regularly expressed in consensus-agreed outcome documents of the Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. Nuclear safety and security have also been reinforced by legally binding instruments such as the Convention on the Physical Protection of Nuclear Material and the International Convention for the Suppression of Acts of Nuclear Terrorism.

7. While they are not universal, these measures are seen as building upon the foundations laid by the Non-Proliferation Treaty and as fully consistent with its provisions.

8. The focus of such measures has, however, almost exclusively centred on the non-proliferation and peaceful uses pillars of the Non-Proliferation Treaty. Since its entry into force, the disarmament pillar of that Treaty has been mostly neglected.

### **Elimination of nuclear weapons**

9. Article VI of the Non-Proliferation Treaty includes a legally binding obligation to pursue nuclear disarmament, as follows: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

10. However, few multilaterally agreed "effective measures" have been implemented to support the disarmament provisions of the Non-Proliferation Treaty through legally binding rules. Attempts to strengthen the disarmament provisions within existing frameworks such as the Conference on Disarmament have, historically, been strongly resisted. Negotiations on the treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices (fissile material cut-off treaty) have been stalled in the Conference on Disarmament for over 20 years. Some concrete and valuable progress has been made within the framework of the review cycle of the Non-Proliferation Treaty. However, the incremental progress made there, and the commitments undertaken by the 2000 and 2010 Review

Conferences in their Final Documents, remain largely unfulfilled, and the nuclear-weapon States have regularly called their status into question.

11. In the absence of an enabling legally binding framework and given the slow pace of implementation of agreed disarmament commitments, the negotiation and adoption of the Prohibition Treaty is an effort by non-nuclear-weapon States to make progress towards the full implementation of article VI of the Non-Proliferation Treaty. This is, after all, an obligation for all States parties to the Non-Proliferation Treaty. Far from undermining the Non-Proliferation Treaty, the comprehensive set of prohibitions set out in the Prohibition Treaty give practical expression to the “effective measures” for nuclear disarmament envisaged in the Non-Proliferation Treaty.

12. The Prohibition Treaty is inspired by and serves to follow through on the shared aspiration enshrined in the preamble of the Non-Proliferation Treaty, to “facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control”.

13. The provisions of the Prohibition Treaty are fully consistent with and complementary to the Non-Proliferation Treaty. Indeed, the negotiators of the Prohibition Treaty carefully considered how to ensure complementarity between the Prohibition Treaty and the Non-Proliferation Treaty throughout the negotiations of the Prohibition Treaty. For example, the Non-Proliferation Treaty is directly referenced in the preamble of the Prohibition Treaty, as follows: “Reaffirming also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security”.

14. The recognition of the Non-Proliferation Treaty as “the cornerstone” of the nuclear disarmament and non-proliferation regime underscores the centrality of that Treaty and the continued commitment of all States parties to the Prohibition Treaty to the full and effective implementation of the Non-Proliferation Treaty. Since the entry into force of the Prohibition Treaty, its States parties have continued to actively contribute to the Non-Proliferation Treaty, including through substantive participation in formal meetings of the tenth review cycle, engagement with civil society, the submission of detailed working papers and repeated calls for the full implementation and universalization of the Non-Proliferation Treaty.

15. At Non-Proliferation Treaty meetings, States parties to the Prohibition Treaty have consistently emphasized the complementarity between the two Treaties. For example, at the 2019 session of the Preparatory Committee for the 2020 Review Conference, the initial sponsors of General Assembly resolution [73/48](#), entitled “Treaty on the Prohibition of Nuclear Weapons”, issued a joint statement, in which they reaffirmed the Non-Proliferation Treaty as “the cornerstone of the international nuclear disarmament and non-proliferation regime”. Further, they noted that “[t]he Treaty on the Prohibition of Nuclear Weapons and the Treaty on the Non-Proliferation of Nuclear Weapons are fully compatible and, indeed, complementary. After all, both the Prohibition Treaty and the Non-Proliferation Treaty have the same goal at their core – the abolition of nuclear weapons. The new Treaty complements and strengthens the Non-Proliferation Treaty [and] encompasses the legal element, indispensable to achieve and maintain a world without nuclear weapons.”

16. By prohibiting nuclear weapons through the Prohibition Treaty, its States parties have created a legal framework that can help to implement article VI of the Non-Proliferation Treaty and achieve a nuclear-weapon-free world – a goal which all

States parties to the Non-Proliferation Treaty, including nuclear-weapon States, have publicly declared as their objective. The Prohibition Treaty also supports the non-proliferation objectives of the Non-Proliferation Treaty. Through its focus on the humanitarian consequences and inherent risks of nuclear weapons, the Prohibition Treaty serves to underscore and strengthen the taboo against the acquisition of nuclear weapons, which is framed in the Treaty as legally and ethically unacceptable.

### **Shared basis**

17. Both the Non-Proliferation Treaty and the Prohibition Treaty share the objective of eliminating nuclear weapons. Indeed, this interest is reflected in a common antecedent, the first General Assembly resolution (resolution 1 (I)), in which the Assembly called for “the elimination from national armaments of atomic weapons”.

18. Additionally, both Treaties share, as a fundamental driving concern, the devastating humanitarian consequences that would result from the use of nuclear weapons.

19. In the Non-Proliferation Treaty, the inherent danger posed to humanity by a nuclear war is recognized in its preamble, as follows: “Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples”.

20. At the 2010 Review Conference, States parties to the Non-Proliferation Treaty addressed issues including victim assistance, environmental remediation and international cooperation and assistance, which were later fully developed and established as positive obligations in the Prohibition Treaty.

21. In paragraphs 70 and 71 of its Final Document, the 2010 Review Conference welcomed “the attention to problems of safety and contamination related to the discontinuation of nuclear operations formerly associated with nuclear-weapons programmes, including, where appropriate, safe resettlement of any displaced human populations and the restoration of economic productivity to affected areas” and encouraged “all Governments and international organizations that have expertise in the field of clean-up and disposal of radioactive contaminants to consider giving appropriate assistance as may be requested for remedial purposes in these affected areas, while noting the efforts that have been made to date in this regard”.

22. In the Final Document, the 2010 Review Conference further elaborated on the position of States parties to the Non-Proliferation Treaty with regard to the humanitarian consequences, as follows: “The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law.”

23. A similar concern about the devastating humanitarian consequences of nuclear weapons informed and drove the negotiations and adoption of the Prohibition Treaty. International conferences in Oslo, Nayarit, Mexico, and Vienna in 2013 and 2014 deepened the international community’s understanding of the humanitarian impacts, including the gendered impacts, of nuclear weapons. In the Humanitarian Pledge that emerged as a result of these conferences, article VI of the Non-Proliferation Treaty was specifically linked with the need for further legal measures to prohibit nuclear weapons. It contained a call for all States parties to the Non-Proliferation Treaty to renew their commitment to the urgent and full implementation of existing obligations under article VI and to identify and pursue effective measures leading to the “prohibition and elimination of nuclear weapons”.

24. Taking into account work conducted on the humanitarian consequences in the framework of the Non-Proliferation Treaty, the 2013 and 2016 Open-Ended Working Groups on nuclear disarmament, the Oslo, Nayarit and Vienna conferences and the subsequent Humanitarian Pledge, the preamble of the Prohibition Treaty was adopted with the following language: “Deeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances”.

25. Given that concern about the humanitarian consequences of nuclear weapons is a shared basis for both the Non-Proliferation Treaty and the Prohibition Treaty, the international community’s work on this issue will continue to inform and influence both treaties.

### **III. Strengthening the nuclear disarmament norm**

26. One of the objectives of the Prohibition Treaty is to advance international humanitarian law and promote the norm of nuclear disarmament. This goes beyond the Non-Proliferation Treaty. By establishing a legal framework to achieve the end-goal of a nuclear-weapon-free world, the Prohibition Treaty complements several disarmament-related instruments and initiatives, such as the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, the negotiation of a fissile material cut-off treaty, stockpile reduction negotiations and nuclear risk reduction.

27. In relation to the Comprehensive Nuclear-Test-Ban Treaty, the Prohibition Treaty includes a specific reference to that Treaty in its preamble, as follows: “Recognizing the vital importance of the Comprehensive Nuclear-Test-Ban Treaty and its verification regime as a core element of the nuclear disarmament and non-proliferation regime”.

28. This is further complemented by the inclusion of a provision to never, under any circumstances, test nuclear weapons or other nuclear explosive devices, in the general prohibitions of article 1 (1) (a) of the Prohibition Treaty.

29. These provisions are not intended as an alternative framework to the Comprehensive Nuclear-Test-Ban Treaty, but rather to reinforce the normative pressure on States to make progress on nuclear non-proliferation and disarmament, including the ratification of the Test-Ban Treaty. Indeed, some States have taken the decision to ratify both Treaties simultaneously. Similarly, in the preamble of the Prohibition Treaty, the States parties reaffirmed the conviction that the establishment of nuclear-weapon-free zones “enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contributes towards realizing the objective of nuclear disarmament”, which is fully consistent with article VII of the Non-Proliferation Treaty.

30. The Prohibition Treaty is also compatible with, and complementary to, the existing treaties of Tlatelolco, Rarotonga, Bangkok, Pelindaba and Semipalatinsk on nuclear-weapon-free zones. The Prohibition Treaty is fully in line with the provisions in these treaties to prohibit the use, testing, manufacture, production, acquisition, receipt, storage, installation, deployment and possession of nuclear weapons; strengthen the non-proliferation norm; and recognize the right to the use of nuclear energy for peaceful purposes.

#### **Nuclear non-proliferation and nuclear safeguards**

31. The Prohibition Treaty also contributes to the strengthening of international nuclear non-proliferation and the safeguarding of nuclear materials. Like the

Non-Proliferation Treaty, the Prohibition Treaty includes specific obligations to conclude nuclear safeguards agreements. Ratification of the Prohibition Treaty commits its States parties that have not yet done so to bring into force a comprehensive safeguards agreement with IAEA, based on its document INFCIRC/153 (Corrected).

32. As such, the Prohibition Treaty ensures a safeguard standard that is the basis for all comprehensive IAEA safeguards applied in non-nuclear-weapon States parties to the Non-Proliferation Treaty. Furthermore, the Prohibition Treaty explicitly states that the application of INFCIRC/153 (Corrected) is without prejudice to additional agreements a State may adopt in the future. This leaves the pathway open to accommodate new and higher standards of safeguards that might be elaborated in the future. In addition to obliging any State party that has not yet done so to bring into force a comprehensive safeguards agreement, the Prohibition Treaty advances the existing safeguards regime by legally obliging its parties to keep in place any additional safeguards arrangements they have voluntarily agreed to implement. As such, States that have accepted safeguards arrangements that go beyond the requirements of the Non-Proliferation Treaty are prohibited under the terms of the Prohibition Treaty from withdrawing from those arrangements. States that have already voluntarily accepted the IAEA additional protocol, from INFCIRC/540 (Corrected), in addition to their comprehensive safeguards agreement, are legally committed not to renounce that agreement, which ultimately strengthens the Non-Proliferation Treaty and the existing safeguards regime.

#### **IV. Possible recommendations for the first Meeting of States Parties**

33. The complementarity between the Prohibition Treaty and the Non-Proliferation Treaty is already accepted by States parties to the Prohibition Treaty. However, continuing to emphasize and raise awareness of this complementarity among non-States parties, in a factual manner, could assist in furthering the objectives on universalization under article 12 of the Prohibition Treaty. As such, consideration should be given to the following possible recommendations for the first Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons and the intersessional period:

(a) States parties could, as part of the final outcome document(s) of their first meeting include specific language to recognize the compatibility of, and complementarity between, the Prohibition Treaty and the Non-Proliferation Treaty;

(b) The final outcome document(s) could also include language to recognize that the future work of the Prohibition Treaty, including the designation of the competent international authority, should be conducted in a manner that builds upon the existing complementarity with the existing nuclear disarmament and non-proliferation regime;

(c) States parties to the Prohibition Treaty are encouraged to emphasize the complementarity of the Treaty with the existing disarmament and non-proliferation regime at appropriate opportunities, including at Conference Preparatory Meetings and Review Conferences of the Parties to the Non-Proliferation Treaty, and with relevant nuclear disarmament-related initiatives and groupings;

(d) States parties should encourage the scientific advisory board (if established) to convene a meeting to discuss and develop gender-responsive, intersectional methodologies for their activities;

(e) The first Meeting of States Parties to the Prohibition Treaty should consider appointing an informal facilitator to further explore and articulate the possible areas of tangible cooperation between the Prohibition Treaty and the Non-Proliferation Treaty during the intersessional period;

(f) The Prohibition Treaty should cooperate with other international bodies, such as IAEA and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, in order to enhance cooperation, including in the areas of nuclear safeguards and verification. Such cooperation should enhance the complementarity between the Prohibition Treaty, the Non-Proliferation Treaty and the Comprehensive Nuclear-Test-Ban Treaty;

(g) States parties to the Prohibition Treaty should continue to work together on outreach projects in order to raise awareness, not just among Governments, but also among civil society, academia, parliamentarians and the general public, including youth organizations, to highlight the complementarity between the Prohibition Treaty and the existing disarmament and non-proliferation regime, including treaties on nuclear-weapon-free zones.

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